

**REMARKS**

Applicants herein elect Group I claims in response to the Restriction Requirement.

Claims 4-6 and 18-25 have been canceled, without prejudice. Applicants respectfully reserve the right to pursue the subject matter of recited in these claims in one or more future continuing applications.

Claims 1, 3, 9, and 11 are amended to more particularly point out and distinctly claim the invention, as well as correctly several editorial oversights. No new matter is added by amendment to claims 1, 3, 9 and 11.

A Petition to Extend Time, under 35 U.S.C. §1.136(a), for one (1) month, as a large entity, is enclosed.

**Response to Restriction Under 35 U.S.C. §121**

The Examiner has set forth the following restriction requirement under 35 USC 121:

- I) Claims 1-11 and 17-18;
- II) Claims 12-15, 25;
- III) Claim 16;
- IV) Claims 19-22;
- V) Claim 23; and,
- VI) Claim 24.

**Applicants elect Group I (claims 1-11, 17-18, allegedly “drawn to DNA construct, vaccine, and method for protecting against infection, classified in class 435, subclass 320.1 and class 514, subclass 44”), with traverse.**

Applicants cancel herein claims 12-15 and 25 (Group II), claim 16 (Group III), claims 19-22 (Group IV), claim 23 (Group V) and claim 24 (Group VI). As noted in the Remarks section, Applicants respectfully reserve the right to pursue the subject matter of recited in these claims in one or more future continuing applications.

Group I claims are elected (claims 1-11, 17-18). Claims 4-6 are cancelled and claims 1, 3, 9 and 11 are amended (both as entered herein) to recite a DNA construct, polynucleotide vaccine, and associated methods, which comprise a recited plasmid backbone as a portion of the DNA construct or polynucleotide vaccine. Applicants respectfully take the position that cancellation of claims 4-6 and 18 traverse the requirement for a species election, as no complete sequences are recited in the amended Group I. Instead, these claims recite various influenza genes inserted into a specific population of plasmid backbones, which as enabled throughout the specification, promote *in vivo* immune responses upon vertebrate administration. Applicants respectfully take the position that no search burden exists for examination of Group I claims as currently amended.

Applicants respectfully take the position that all claims are now in proper form for examination. The Examiner is invited to contact the undersigned attorney if clarification is required on any aspect of this response, or if any of the claims are considered to require further amendment to be placed in condition for examination and allowance after entry of this Amendment.

Respectfully submitted,

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